

LCB File No. R125-98

**NOTICE OF INTENT TO ACT UPON REGULATIONS
NEVADA STATE ENVIRONMENTAL COMMISSION
NOTICE OF HEARING**

The Nevada State Environmental Commission will hold a public hearing beginning at **9:00 a.m. on Thursday, September 24, 1998, at the Division of Wildlife Conference Room A, 1100 Valley Road, Reno, Nevada.**

The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of permanent regulations in Nevada Administrative Code (NAC) Chapters 444 and 445B. If no person directly affected by the proposed action appears to request time to make an oral presentation, the State Environmental Commission may proceed immediately to act upon any written submission.

Petition 98008 (LCB File No. R-124-98) is a proposed permanent petition amending NAC 444.8427 to 444.9452, the hazardous waste management regulations. The proposed amendments update those regulations adopted by reference from July 1, 1997 to July 1, 1998 for NAC 444.8427, 444.84275, 444.850, 444.8632 and 444.9452. The major changes proposed by the adoption by reference are new land disposal restrictions treatment standards for metal bearing wastes, including toxicity characteristics for metal wastes and hazardous waste from minerals. The new federal regulations will exclude from the definition of solid waste certain shredded circuit boards in recycling operations as well as certain materials used in wood preserving operations. The proposed amendments are necessary to incorporate changes to the federal hazardous waste regulations to refer to the most current federal regulations, to revise state regulations to be more consistent with federal regulations and to make technical corrections to state regulations.

The proposed permanent regulation is not anticipated to have any significant adverse short or long term economic impact on Nevada businesses. The proposed regulation should make it easier for affected businesses to comply by simplifying the requirements. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. The Resource Conservation and Recovery Act (RCRA) Public Law 94-580 was passed by Congress in 1976. Revision of the state hazardous waste regulations is required pursuant to 40 CFR 271.4. This provision requires an U.S. EPA approved state hazardous waste program to be consistent with federal regulations. When federal hazardous waste regulations are revised, state regulations must be updated in accordance with the procedures in 40 CFR 271.21 to remain consistent. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee.

Petition 98009 (LCB File No. R-125-98) is a proposed permanent regulation amending NAC 444.84555 by adding language to expand the application process for a written determination for the construction and operation of a facility for the recycling of hazardous waste including: the basis for determining the economic value of a hazardous waste recycling process; requirements for public participation; and provisions for revocation, modification and appeal of administrator's decision. The proposed amendments are necessary to provide the administrator with the relevant information and facts to properly review written determination applications and determine whether and when it is appropriate to issue, modify, suspend, revoke or deny a written determination.

The proposed amendments are not anticipated to have a significant adverse short or long term economic impact on Nevada businesses. The addition of a public notice and comment period will likely extend the application review process which may impose additional minimal costs on the hazardous waste recycler. The proposed amendments are not anticipated to have a adverse short or long term impact upon the general public. The public will receive a benefit from the information obtained during the public participation process. The amendments are intended to lessen any adverse effects that hazardous waste recycling facilities may have on the public. There will be minor additional costs to the division of environmental protection in providing notice to the public and maintaining a mailing list. These costs are expected to be covered by the application review fees already established for the purpose of reviewing the written determination. The proposed amendments are consistent with, and in addition to, those of the federal government. The proposed amendments do not duplicate or overlap any other existing state regulations. The Resource Conservation and Recovery Act (RCRA) Public Law 94-580 was passed by Congress in 1976. Revision of the state hazardous waste regulations is required pursuant to 40 CFR 271.4. This provision requires a U.S. EPA approved state hazardous waste program to be consistent with federal regulations. When federal hazardous waste regulations are revised, state regulations must be updated in accordance with the procedures in 40 CFR 271.21 to remain consistent. This regulation does not add a new fee, nor increase an existing fee.

Petition 98010 (LCB File No. R-126-98) is a proposed permanent regulation amending NAC 445B.221 by the adoption by reference of 40 CFR 63.40 through 63.44, dealing with construction or reconstruction of major sources of hazardous air pollutants and maximum achievable control technology (MACT) requirements. This adoption by reference implements section 112(g) of the Clean Air Act Amendments of 1990, the Operating Permit Program. In addition the date reference to 40 CFR Parts 72 and 76 has been updated from July 1, 1997 to January 1, 1998. The proposed amendments are necessary since the State must have the authority to review construction and reconstruction of major sources of hazardous air pollutants as part of the Part 70 Operating Permit Program.

The proposed regulation will have a positive short and long term economic impact on the regulated facilities. The amendments will simplify the processes for assuring that major stationary sources are in compliance with all applicable air quality requirements. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The proposed regulations will be consistent with U.S. Environmental Protection Agency statute 42 USC 7401-7671 and the Federal Clean Air Act Titles I-VII.

The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee.

Persons wishing to comment upon the proposed regulations or any other matter listed above may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Environmental Commission, 333 West Nye Lane, Carson City, Nevada 89706-0851. Written submissions must be received at least 5 days before the scheduled public hearing.

A copy of the regulations to be adopted or amended will be on file at the State Library, 100 Stewart Street and the Division of Environmental Protection, 333 West Nye Lane - Room 104, in Carson City and at the Division of Environmental Protection, 555 E. Washington - Suite 4300, in Las Vegas for inspection by members of the public during business hours. In addition, copies of the regulations and public notice have been deposited at major library branches in each county in Nevada. The notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet at <http://www.leg.state.nv.us>.

Pursuant to NRS 233B.0603(c) the provisions of NRS 233B.064 (2) is hereby provided:
"Upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporation therein its reason for overruling the consideration urged against its adoption".

Additional copies of the regulations to be adopted or amended will be available at the Division of Environmental Protection for inspection and copying by the members of the public during business hours. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing, Nevada State Environmental Commission, 333 West Nye Lane, Room 128, Carson City, Nevada, 89706-0851, facsimile (702) 687-5856, or by calling (702) 687-4670 Extension 3118, no later than 5:00 p.m. on **September 18, 1998**.

This public notice has been posted at the following locations: Clark County Public Library, and Grant Sawyer Office Building in Las Vegas; the Washoe County Library and Division of Wildlife in Reno; and at the Division of Environmental Protection and Department of Museums, Library and Arts, State Library and Archives Division in Carson City, Nevada.

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**PROPOSED REGULATIO OF THE
NEVADA STATE ENVIRONMENTAL COMMISSION**

Petition 98009

EXPLANATION - Matter in italics is new; matter in brackets [] is to be omitted.

Authority: NRS 459.485, 459.490 and 459.500

Section 1. NAC 444.84555 is hereby amended to read as follows:

444.84555 **Facility or mobile unit for recycling of hazardous waste: Application for and issuance of administrator's determination.**

1. An application for a written determination that a proposed facility or mobile unit will operate as a facility for the recycling of hazardous waste or mobile unit for the recycling of hazardous waste must be accompanied by:

(a) Name and address of the owner and/or operator of the facility or mobile unit. For a facility, include name and address of the property owner of the location at which the facility is proposed to be constructed or operate.

[(a)] (b) A detailed description of the type of recycling which is proposed, including:

- (1) The manufacturer of the equipment to be used at the facility or mobile unit;
- (2) The nature of the recycling; and
- (3) An explanation evidencing that the:
 - (I) Facility is a facility for the recycling of hazardous waste; or
 - (II) Mobile unit is a mobile unit for the recycling of hazardous waste.

[(b)] (c) A description of the source and estimated amount of hazardous waste to be recycled on an average day and on a peak day.

[(c)] (d) A physical and chemical description of the type of hazardous waste to be accepted by the facility or processed by the mobile unit.

[(d)] (e) A detailed economic analysis of the recycling process to be used at the facility or by the mobile unit, including:

(1) The projected costs to operate the facility or mobile unit;

(2) The fees that would be charged per unit of volume to process waste transported to the facility or processed by the mobile unit; and

(3) The projected value that would be recovered per unit of volume.

(4) *The costs to otherwise manage, recycle, treat or dispose of the material as a hazardous waste.*

[(e)] (f) [For a facility for the recycling of hazardous waste, a] A description of the markets and the uses for the products to be produced and the materials and energy to be recovered.

[(f)] (g) A comparison of the economic and environmental impact of the proposed recycling process to a process which uses material that is not considered waste when producing the same product.

2. The administrator may require the applicant to submit additional information before issuing a written determination.

3. The administrator shall not issue a written determination unless he determines, based upon the application, that:

(a) The facility or mobile unit will be operated as a facility or mobile unit for the recycling of hazardous waste ; **[and the primary economic value is in the recycling of hazardous waste; and]**

(b) The recycling process has economic value. A recycling process is determined to have economic value if:

(1) The products or energy produced or the material recovered as a result of the process is shown to have value in the marketplace; and

(2) The fees that are charged per unit of volume to process the material are less than, or equal to, the costs to otherwise recycle, manage, treat or dispose of the material as a hazardous waste. The fees that are charged per unit of volume may be offset by the recovered unit value of the products or energy produced or the material recovered as a result of the process; and

[(b)] (c) he probable beneficial environmental effect of the facility or mobile unit to the state outweighs the probable adverse environmental effect.

4. Before issuing a written determination for a facility, the administrator shall provide for a period of public notice and comment of not less than 45 days. The request for public comment shall be noticed in a daily or weekly major local newspaper of general circulation and sent to all persons on a mailing list developed and maintained by the administrator. Any person may request to be placed on the mailing list by contacting the administrator. The administrator shall respond to all comments received during the comment period prior to issuing or denying a written determination.

5. The administrator may revoke, suspend or modify a written determination if, at any time, he determines that:

(a) A facility or mobile unit no longer satisfies the conditions stated in the application upon which issuance of the written determination was granted in accordance with subsection 3;

(b) The application misrepresented or failed to fully disclose any relevant facts;

(c) The administrator receives information not available at the time the written determination was issued that would have justified the application of different conditions at the time of issuance; or

(d) The standards or regulations on which the written determination was based have been changed by statute, through promulgation of new or amended standards or regulations.

6. A person may appeal the administrator's decision to issue, deny, revoke, suspend or modify a written determination in accordance with the provisions of NAC 459.9995.

END OF PETITION 98009